



LEGAL SERVICES DIVISION

Legislative Guide

CRIMINAL LAW OVERVIEW

Joe McEniry
Senior Legal Counsel

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LEGISLATIVE GUIDE TO CRIMINAL LAW OVERVIEW



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About the Author:

This Guide was written by Joseph McEniry, J.D., Creighton University, 1992. Mr. McEniry has been a Legal Counsel for the Legal Services Division of the Legislative Services Agency since 1998. Mr. McEniry staffs the Judiciary and Public Safety Committees and the Joint Appropriations Subcommittee on the Justice System, and drafts legislation in the areas of judiciary, corrections, and public safety.

Mr. McEniry can be reached by telephone at (515) 281-3189 or by e-mail at: joseph.mceniry@legis.state.ia.us

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I. Purpose and Overview.

Purpose. The purpose of this Legislative Guide is to provide a general overview of the substantive criminal and sentencing laws in Iowa. The Guide includes a general description of the law relating to arrest, prosecution, and, if convicted, the sentencing of a person charged with a crime. The Guide further describes Iowa's sentencing system, including the variety of sentences available for imposition by judges, and the roles of the Board of Parole, the Department of Corrections, and the Judicial District Departments of Correctional Services. A general overview of Iowa's Sex Offender Registry and the Sexually Violent Predator Act is also included in the Guide. The information presented in this Guide does not provide a detailed analysis of all the elements of Iowa's substantive criminal law and procedure, nor does the Guide provide an in-depth analysis of constitutional issues relating to criminal law.

References to the Code are to the 2007 Iowa Code and the 2007 Iowa Code Supplement. The references to the Iowa Administrative Code are current to September 2007. The references to the Iowa Court Rules are current to September 2007.

Overview. Iowa has an indeterminate criminal sentencing system at the felony level and a determinate sentencing system at the misdemeanor level. However, sentencing for the commission of an aggravated misdemeanor represents a hybrid between the two systems, as the sentencing judge has the discretion to sentence an offender to a determinate term if the sentence handed down is one year or less, and must sentence the offender to an indeterminate term of two years if the sentence is more than one year. Generally, when a person is convicted of a criminal offense in Iowa, the judge determines whether the person should be placed on probation, be assigned to a community-based correctional facility, or serve a term of confinement. However, the maximum length of a person's term of confinement is determined by statute. The current criminal sentencing system at the felony level, while still classified as indeterminate, has been modified statutorily to make the system more determinate in nature. The statutory modifications include mandatory sentences, penalty enhancements, and limitations placed on parole. See the Appendix for all sentences that carry a mandatory sentence, penalty enhancement, or limitation on parole.

II. Criminal Intent.

It is the Legislature's right to define the elements of a crime, subject only to the United States and Iowa Constitutions.¹ Iowa law recognizes both general intent crimes and specific intent crimes.² The Supreme Court of Iowa has addressed the distinction between general and specific intent crimes in the following manner:

When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a further consequence, we ask whether the defendant intended to do the proscribed act. This intention is deemed to be a general

¹ The New Iowa Criminal Code and the Options of the Iowa Supreme Court, 32 Drake L. Rev. 61, 67 (1982-1983).

² Id. at 61, 77-78. See also *Eggman v. Scurr*, 311 N.W.2d 77, 78-79 (Iowa 1981).



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*criminal intent. When the definition refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent.*³

Crimes which have no express intent elements are characterized as general intent crimes.⁴ In a crime defined as a general intent crime, a person must do a voluntary act that is against the law and the person must intend the natural consequences of the person's acts.⁵ Examples of general intent crimes include operating a motor vehicle while intoxicated and sexual abuse in the third degree involving a minor (statutory rape).⁶ A conviction for operating a motor vehicle while under the influence of alcohol does not depend on whether a person intended to drive a motor vehicle while under the influence, only that the person did drive under the influence; nor does a conviction of sexual abuse in the third degree require that the other person have knowledge that the other person is under a certain age, only that the person committed a sex act with a minor under a certain age.⁷ Crimes which carry an express intent element also known as "mens rea" require a special mental element beyond any mental state required during the criminal act itself.⁸ Examples of specific intent crimes include murder in the first degree and assault.⁹ Specific intent means not only being aware of doing an act and doing it voluntarily, but also doing it with a specific purpose in mind.¹⁰

III. Categories of Criminal Penalties.

General Classifications. In general, crimes in Iowa are classified as felonies or misdemeanors. Within the general felony or misdemeanor categories are the various offense classes which typically carry uniform minimum and maximum penalties.¹¹ However, mandatory minimum sentences, penalty enhancements, and limitations on parole have been added, which has led to increased sentence lengths in some offense classes.

A. Felonies.

Overview. A criminal offense is a felony when the statute defining the crime declares it to be a felony.¹² Felonies are classified in descending order of severity from class "A" felonies to class "D" felonies.¹³ Where an offense is declared to be a felony, but no other designation is given, the offense is a class "D" felony by definition under Code section 701.7.

Class "A" Felonies. Class "A" felonies are the most serious offenses under Iowa law and are punishable only by a mandatory life sentence, without possibility for parole or

³ State v. Canas, 597 N.W.2d 488, 495 (Iowa 1999), overruled on other grounds by State v. Turner, 630 N.W.2d 601 (Iowa 2001).

⁴ Eggman at 79.

⁵ Iowa Criminal Jury Instruction 200.1.

⁶ Iowa Code Supplement § 321J.2(1) (operating a motor vehicle while intoxicated) and § 709.4(2) (sexual abuse in the third degree).

⁷ Iowa Code Supplement § 321J.2 (operating while intoxicated) and Iowa Code § 709.4(2) (sexual abuse in the third degree). See State v. Boleyn, 547 N.W.2d 202, 204 (Iowa 1996), operating while intoxicated consists of two essential elements: (1) operation of a motor vehicle (2) while under the influence; and State v. Tague, 310 N.W.2d 209, 212 (Iowa 1981), mistake of fact is no defense to sexual abuse in the third degree involving a minor.

⁸ Canas at 495.

⁹ Iowa Code § 707.2(1) (murder in the first degree) and § 708.1 (elements of varying degrees of assault).

¹⁰ Iowa Criminal Jury Instruction 200.1.

¹¹ Iowa Code § 902.9 (felonies) and § 903.1 (misdemeanors).

¹² Iowa Code § 701.7.

¹³ Iowa Code §§ 902.1 and 902.9.



probation.¹⁴ A class "A" felon can be released from the custody and control of the Iowa Department of Corrections only through a pardon or commutation of the felon's sentence to a term of years by the Governor.¹⁵

Class "B" Felonies. Class "B" felonies are punishable by confinement for no more than 25 years.¹⁶ However, the following class "B" felonies are punishable by confinement for no more than 50 years:

- Certain felony drug offenses.¹⁷
- Murder in the second degree.¹⁸
- Multiple acts of child endangerment.¹⁹
- Railroad vandalism involving a death.²⁰

Class "C" Felonies. Class "C" felonies are punishable by confinement for no more than 10 years and a fine of at least \$1,000 but not more than \$10,000.²¹

Class "D" Felonies. Class "D" felonies are punishable by confinement for no more than five years and a fine of at least \$750 but not more than \$7,500.²²

Other Felony Penalties. A person convicted of manufacturing or possession with the intent to deliver methamphetamine or amphetamine to a minor commits a felony that is punishable by confinement for no more than 99 years.²³ If a person is convicted of a second or subsequent offense, the offense is classified as a class "A" felony.²⁴ A person convicted of a third or subsequent offense of operating while intoxicated commits a class "D" felony and may be sentenced to imprisonment for at least 30 days and up to one year in the county jail as an alternative sentence to confinement of up to five years in prison, in addition to a mandatory minimum fine of at least \$3,125.²⁵

B. Misdemeanors.

Overview. All public offenses which are not felonies are misdemeanors.²⁶ Misdemeanors are classified as aggravated, serious, and simple misdemeanors, in decreasing order of severity.²⁷ Where an act is declared to be a public offense, crime, or misdemeanor, but no other designation is given, the act is a simple misdemeanor by definition under Code section 701.8.

¹⁴ Iowa Code § 902.1.

¹⁵ See generally, Iowa Const. Art. IV, §16; Iowa Code § 902.1.

¹⁶ Iowa Code § 902.9(2).

¹⁷ Iowa Code Supplement § 124.401(1)(a).

¹⁸ Iowa Code § 707.3.

¹⁹ Iowa Code § 726.6A.

²⁰ Iowa Code § 716.10(2)(a).

²¹ Iowa Code § 902.9(4).

²² Iowa Code § 902.9(5).

²³ Iowa Code §§ 124.401D and 902.9(1).

²⁴ Iowa Code § 124.401D.

²⁵ Iowa Code Supplement § 321J.2(2)(c).

²⁶ Iowa Code § 701.8.

²⁷ Iowa Code § 903.1.



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Aggravated Misdemeanors. The maximum penalty for an aggravated misdemeanor is imprisonment not to exceed two years in a facility operated by the Department of Corrections and a fine of not less than \$625 but not more than \$6,250.²⁸ However, the court may impose a sentence of confinement for a determinate term of one year or less to be served in the county jail.²⁹

Serious Misdemeanors. The maximum penalty for a serious misdemeanor is a fine of not less than \$315 but not more than \$1,825. Imprisonment for up to one year in the county jail may be ordered in addition to or in lieu of the fine.³⁰

Simple Misdemeanors. The maximum penalty for a simple misdemeanor is a fine of at least \$65 but not more than \$625. Imprisonment for up to 30 days in the county jail may be ordered in addition to or in lieu of the fine.³¹

Scheduled Violations. In addition to the classified misdemeanors, a class of offenses known as scheduled violations is created in Code section 805.8. A scheduled violation is a violation of state, county, or city statute or ordinance for which the applicable penalty is a specific fine amount, which is listed in Code sections 805.8A, 805.8B, and 805.8C. Persons who commit acts which are scheduled violations are generally issued a citation or ticket and do not serve any term of confinement.³²

IV. Criminal Proceedings.

A. Search and Seizure.

The United States and Iowa Constitutions grant the people the fundamental right to be secure in their persons, houses, and papers and effects, against unreasonable searches and seizures, unless the government first obtains a search warrant based upon probable cause.³³ A valid search warrant must be signed by a magistrate or judge, be supported by an affidavit or testimony submitted under oath, and establish probable cause.³⁴ The search warrant must also describe the person, place, or thing to be searched with sufficient specificity.³⁵ The standard for probable cause is whether a person of reasonable prudence would believe a crime has been committed or that evidence of a crime might be located in the particular area to be searched.³⁶ If the government conducts an unreasonable search and seizure, the defendant's remedy is the exclusion of the evidence from trial.³⁷ This remedial exclusion of evidence is commonly referred to as the exclusionary rule. However, several exceptions to this rule for searches and seizures conducted by the government without a warrant have been established by the courts, including (1) consent searches, (2)

²⁸ Iowa Code § 903.1(2).

²⁹ Iowa Code § 903.1(2).

³⁰ Iowa Code § 903.1(1)(b).

³¹ Iowa Code § 903.1(1)(a).

³² Iowa Code § 805.1.

³³ U.S. Const. Amend. IV; Iowa Const. Art. I, § 8.

³⁴ Iowa Code § 808.3.

³⁵ Iowa Code § 808.3.

³⁶ State v. Naujoks, 637 N.W.2d 101, 108 (Iowa 2001).

³⁷ State v. McConnelee, 690 N.W.2d 27, 33 (Iowa 2004).



searches based on probable cause and exigent circumstances, (3) search items in plain view, and (4) searches incident to a lawful arrest.³⁸

B. Arrest.

An arrest is the taking of a person into custody when authorized by law.³⁹ Arrests may be made pursuant to a warrant or without a warrant.⁴⁰ An arrest pursuant to a warrant is commenced by the filing of a complaint before a judge which alleges that a person has committed a crime.⁴¹ If the judge believes probable cause exists that a crime has been committed, the judge may issue an arrest warrant for the person named in the complaint.⁴² A police officer is the only person authorized to make an arrest pursuant to a warrant issued by a judge.⁴³ However, a citizen may make an arrest if a crime is committed in the person's presence, or if the arresting citizen reasonably believes that a felony has been committed.⁴⁴

C. Defense Representation.

A person charged with a criminal offense is generally entitled to representation in legal proceedings by an attorney.⁴⁵ In Iowa, a person is entitled to an attorney for any offense where there is a possibility of imprisonment if the person is convicted.⁴⁶ The court is required by statute to appoint an attorney if the person is indigent.⁴⁷ A person is considered indigent if the person's income is at or below 125 percent of the United States poverty level.⁴⁸ An indigent person is entitled to a court-appointed attorney not only in criminal cases but also under Code chapters 229A, 600, 665, 814, 822, and 908; and sections 232.141, 598.23A, 600A.6B, 811.1A, 814.9, 814.10, and 815.4.⁴⁹

D. Prosecution.

Overview. Upon the receipt of alleged facts that a crime has been committed, the county attorney has the discretion to file criminal charges.⁵⁰ A criminal defendant may be charged with an indictable misdemeanor or felony by the filing of a trial information or upon the return of an indictment by a grand jury; in most cases a defendant is charged by the filing of a trial information.⁵¹ Generally, the trial information contains the alleged facts of a

³⁸ Naujoks at 107.

³⁹ Iowa Code § 804.5.

⁴⁰ Iowa Code § 804.6.

⁴¹ Iowa Code § 804.1.

⁴² Iowa Code § 804.1.

⁴³ Iowa Code § 804.6.

⁴⁴ Iowa Code § 804.9.

⁴⁵ U.S. Const. Amend. VI; Iowa Const. Art. I, § 10; McNabb v. Osmundson, 315 N.W.2d 9, 14 (1982).

⁴⁶ McNabb at 14; Iowa R.Cr.P. 2.28.

⁴⁷ Iowa Code § 815.9(1)(a).

⁴⁸ Iowa Code § 815.9(1)(a).

⁴⁹ Iowa Code ch. 229A (commitment of sexually violent predators), 600 (adoption), 665 (contempt), 814 (appeals), and 822 (postconviction), and 908 (violations of parole or probation), and Iowa Code §§ 232.141 (juvenile cases), 598.23A (contempt proceedings for support payments), 600A.6B (termination of parental rights), 811.1A (felony detention hearing), 814.9 (indigent right to appellate transcript), 814.10 (indigent application for transcript), and 815.4 (special witnesses).

⁵⁰ Iowa Code Supplement § 331.756(1); Iowa R.Cr.P. 2.5(1).

⁵¹ Iowa Const. Art. I, § 11; see generally, Iowa R.Cr.P. 2.5.



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crime; the facts are usually gathered by the local police or other investigative governmental agencies.

Plea Agreements. If the criminal charge is not dismissed by a judge during the pretrial stage, the defendant has the choice to enter into a plea agreement with the county attorney or proceed to trial on the charge.⁵² In almost all cases, the defendant and the county attorney enter into a plea agreement whereby the defendant agrees to plead guilty to a criminal charge in exchange for the county attorney agreeing not to seek the maximum penalty against the defendant.⁵³ If a plea agreement is entered into, the county attorney is usually bound by the agreement until the defendant pleads guilty; however, a defendant is not bound by the agreement until a guilty plea is entered.⁵⁴ Generally, the county attorney has the following options during plea discussions in exchange for a defendant pleading guilty:

- The defendant is allowed to plead guilty to a lesser or related offense that carries a lighter sentence.
- The county attorney agrees to drop or not file certain charges.
- For misdemeanor charges, the county attorney may agree to recommend to the court a certain amount of days in jail or no jail sentence at all.
- The county attorney agrees to recommend to the court that "mitigating circumstances" exist under Code section 901.10 for certain drug- or weapon-related offenses, which would reduce a defendant's sentence.
- The county attorney agrees to recommend to the court a deferred judgment, deferred sentence, or probation, or agrees to make no recommendation as to sentence.

Guilty Pleas. After a defendant enters a guilty plea, the judge decides the defendant's sentence.⁵⁵ However, in most cases where a plea agreement is made between the county attorney and the defendant, the judge will follow the agreement, although the court is not bound to abide by any agreement between the parties.⁵⁶ If the defendant chooses to proceed to trial and is subsequently convicted, the county attorney is not bound by any plea agreement negotiations and is free to recommend to the court any type of sentence. Thus, a defendant convicted at trial loses some degree of certainty as to what type of sentence will be imposed.

E. Trial.

A criminal case will proceed to trial if the charges have not been dismissed against a person who is competent to stand trial, and the person does not enter a plea. A person is entitled to a jury trial before 12 jurors in most cases, but in a simple misdemeanor case the jury is limited to six jurors.⁵⁷ To convict a person of a crime, the jury must be unanimous in

⁵² Iowa R.Cr.P. 2.10(1).

⁵³ Iowa R.Cr.P. 2.10(1).

⁵⁴ State v. Edwards, 279 N.W. 2d 9 (Iowa 1979).

⁵⁵ Iowa Code § 901.5.

⁵⁶ Iowa R.Cr.P. 2.10(2).

⁵⁷ See generally Iowa Const. Art. I, § 9 (right to a jury trial); Iowa R.Cr.P. 2.18(1) for most criminal cases and Iowa R.Cr.P. 2.67(6) for simple misdemeanors.



its verdict.⁵⁸ A person may also choose to waive the person's right to a jury trial and proceed with a trial before a judge.⁵⁹

F. Appeal.

The Iowa Supreme Court and Iowa Court of Appeals have jurisdiction over all criminal appeals in Iowa.⁶⁰ If convicted of a crime other than a simple misdemeanor, by either a jury or a judge, a person must appeal within 30 days of conviction or the person loses the right to appeal.⁶¹ An appeal of any criminal case other than a simple misdemeanor is to the Supreme Court and the Supreme Court then decides whether to hear the appeal or to refer it to the Court of Appeals.⁶² If the appeal is heard before the Court of Appeals, a person may file an application for further review with the Supreme Court within 20 days of the Court of Appeals ruling.⁶³ A person convicted of a simple misdemeanor has 10 days to appeal the decision to the district court.⁶⁴

G. Postconviction Relief.

Postconviction remedies exist to give trial courts an opportunity to consider and correct challenges to their original actions.⁶⁵ In many instances a postconviction relief action is in addition to any appeal; however, the appellate courts will hear postconviction arguments on appeal if the record is sufficient.⁶⁶ A person who has been convicted may seek postconviction relief under the following bases in Code section 822.2:

- The conviction or sentence was in violation of the United States or Iowa Constitution.
- The court was without jurisdiction to impose sentence.
- The sentence exceeds the statutory maximum authority.
- New evidence of material facts requires a new trial in the interest of justice.
- The person is unlawfully held in custody.
- The person's "earned time" has been unlawfully forfeited.
- The person's conviction is subject to collateral attack⁶⁷ based upon any error.

H. Confinement of a Dangerous Person.

The county attorney may file a verified ex parte motion asking the court for the immediate arrest of a defendant awaiting sentencing, if the defendant is not already in

⁵⁸ Iowa R.Cr.P. 2.22(5).

⁵⁹ See Iowa R.Cr.P. 2.17(1) for criminal cases except simple misdemeanors and Iowa R.Cr.P. 2.64 for simple misdemeanors. A demand for a jury trial for a simple misdemeanor case must be made within 10 days of a plea of not guilty or the trial is before a judge, whereas in all other criminal cases a jury trial must be waived.

⁶⁰ Iowa Code § 602.4102(1), (2).

⁶¹ Iowa R. App. P. 6.101.

⁶² Iowa Code § 602.4102(2).

⁶³ Iowa Code § 602.4102(4).

⁶⁴ Iowa R.Cr.P. 2.73(1).

⁶⁵ State v. Swartz, 541 N.W.2d 533, 541 (Iowa 1995).

⁶⁶ State v. Spurgeon, 533 N.W.2d 218, 220 (Iowa 1995).

⁶⁷ See Black's Law Dictionary, p. 261 (6th edition) for definition of "collateral attack."



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custody, who is suspected of being a danger to another person or property.⁶⁸ The detention hearing must be held before a judge within 72 hours of the defendant's arrest, or if the defendant is in custody, within 72 hours of the filing of the motion.⁶⁹ If the court finds by clear and convincing evidence that the person is a danger to another person or property, the person is denied bail.⁷⁰

I. Confinement of a Mentally Incompetent Person.

Mental Incompetency — Suspension of Criminal Proceedings. At any stage of a criminal proceeding, the defendant or the defense attorney may make an application to the court stating specific facts showing that the defendant is suffering from a mental disorder and is not competent to stand trial.⁷¹ The court may make its own motion if the defendant or defense attorney in the criminal proceeding fails to make an application.⁷² The court must schedule a hearing to determine if probable cause exists to sustain the allegations.⁷³ If the court determines probable cause exists, the court suspends further proceedings, the defendant's right to a speedy indictment and speedy trial is tolled, and a hearing must be held on the defendant's competency to determine whether the defendant appreciates the charge, understands the proceedings, and can effectively assist in the defendant's defense.⁷⁴ The court must order a psychiatric evaluation of the defendant, or if a recent evaluation exists, the court may use that evaluation in the competency hearing.⁷⁵ A competency hearing is required within 14 days of the arrival of the person at a psychiatric facility for the performance of an evaluation, or within five days of the filing of an application if a recent evaluation will be used in the hearing.⁷⁶

Competency Hearing. The court receives all relevant and material evidence at the competency hearing and the court is not bound by the rules of evidence.⁷⁷ If the court finds the defendant is competent to stand trial, the court must reinstate the criminal proceedings against the defendant.⁷⁸ If the court, by a preponderance of the evidence, finds the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court must suspend the criminal proceedings indefinitely and order the defendant to be placed in a treatment program.⁷⁹

Placement and Treatment. At the conclusion of the competency hearing, if the court finds the defendant does not pose a danger to the public peace and safety, is qualified for

⁶⁸ Iowa Code § 811.1A(1) and (2)(a).

⁶⁹ Iowa Code § 811.1A(2)(b).

⁷⁰ Iowa Code § 811.1A(1) and (2).

⁷¹ Iowa Code § 812.3(1).

⁷² Iowa Code § 812.3(1).

⁷³ Iowa Code § 812.3(1).

⁷⁴ Iowa Code § 812.3(1).

⁷⁵ Iowa Code § 812.3(2).

⁷⁶ Iowa Code § 812.4(1).

⁷⁷ Iowa Code § 812.5.

⁷⁸ Iowa Code § 812.5(1).

⁷⁹ Iowa Code § 812.5(2).



pretrial release, and is willing to cooperate with treatment, the court must order the person to undergo mental health treatment designed to restore the defendant to competency.⁸⁰

If by clear and convincing evidence the defendant poses a danger to the public peace and safety, or is not qualified for pretrial release, or does not cooperate with treatment, the court must commit the defendant to an appropriate inpatient treatment facility.⁸¹ The defendant must be committed as a safekeeper to the custody of the Director of the Department of Corrections for treatment if the defendant poses a danger to the public peace and safety.⁸² If the defendant does not pose a danger to the public peace and safety but is otherwise being held in custody, the defendant is placed in a facility operated by the Department of Human Services for treatment.⁸³

Restoration of Competency. After placement, if the treating psychiatrist or doctorate-level psychologist finds there is a substantial probability the defendant has acquired the ability to appreciate the charge, understand the proceedings, and effectively assist in the defendant's defense, the psychiatrist or psychologist, or the director of the facility treating the defendant, notifies the court, and a hearing is set on the defendant's competency within 14 days of being notified.⁸⁴

If there is a substantial probability the competency of the defendant will not be restored, the court shall also be notified, and a hearing is required within 14 days of the court being notified.⁸⁵

If the treating psychiatrist or doctorate-level psychologist finds the defendant would benefit from either a more restrictive or less restrictive placement for treatment, the psychiatrist or doctorate-level psychologist must notify the court, and a hearing must be set on the matter by the court within 14 days of being notified.⁸⁶

Restoration of Competency Hearing. Fourteen days after receiving a notice that there is a substantial probability that the competency of the defendant has been restored, or there is a substantial probability the defendant's competency will not be restored or the appropriate level of treatment should be modified, the court must hold a restoration of competency hearing.⁸⁷ Upon a finding by the court that the defendant's competency has been restored, the court must terminate the placement and restore the criminal proceedings against the defendant.⁸⁸ If the court finds by a preponderance of the evidence that the defendant's competency has not been restored but finds the defendant is making progress in regaining competency, the court must continue the placement.⁸⁹ If the court finds there is a substantial probability the defendant's competency will not be restored in a reasonable amount of time, the court must terminate the placement.⁹⁰

⁸⁰ Iowa Code § 812.6(1).

⁸¹ Iowa Code § 812.6(2).

⁸² Iowa Code § 812.6(2)(a). See Iowa Code § 229A.2(8) for the definition of "safekeeper."

⁸³ Iowa Code § 812.6(2)(b).

⁸⁴ Iowa Code § 812.8(1) and (4).

⁸⁵ Iowa Code § 812.8(3) and (4).

⁸⁶ Iowa Code § 812.8(2) and (4).

⁸⁷ Iowa Code § 812.8(4).

⁸⁸ Iowa Code § 812.8(5).

⁸⁹ Iowa Code § 812.8(6).

⁹⁰ Iowa Code § 812.8(8).



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Length of Placement and Other Proceedings. A defendant cannot be placed for a period greater than the maximum term of confinement for the criminal offense for which the defendant is accused or 18 months, whichever is shorter.⁹¹ If the length of the defendant's placement equals the maximum length of the term of confinement for which the defendant is accused, the criminal offense must be dismissed by the court with prejudice.⁹² When the defendant's placement equals 18 months, the court must schedule a hearing to determine whether the competency of the defendant has been restored.⁹³ The court must terminate the placement of the defendant if the defendant's mental competency has not been restored.⁹⁴

The state may, after termination of placement, commence civil commitment proceedings under Code chapter 229 or 229A.⁹⁵ After termination of the placement, if the criminal proceedings have not been dismissed with prejudice, the state may seek to file an application seeking to reinstate the criminal proceedings if it appears the competency of the defendant has been restored.⁹⁶

V. Imposition of Sentences.

A. Sentencing by the Court.

Sentencing Factors. A judge has some discretion to determine the exact terms or form a sentence will take in a particular case. The judge is required by statute to decide which sentence will provide maximum opportunity for rehabilitation of the person and protect the community from further offenses.⁹⁷ In applying discretion the Iowa Supreme Court has stated that the court:

*should weigh and consider all pertinent matters determining proper sentence, including nature of the offense, the attending circumstances, defendant's age, character, and propensities and chances of reform. The courts owe a duty to the public as much as to the defendant in determining a proper sentence. The punishment should fit the crime and the individual.*⁹⁸

Other factors usually considered by the court in applying discretion include the defendant's prior criminal record and employment circumstances.⁹⁹ The sources of information on which the court may rely are varied and can include information presented by the prosecutor, the defense, a presentence investigation, victim impact statements, and information derived from any trial or hearings.¹⁰⁰ The court does not, however, necessarily have the same types of sentencing information available for every defendant in every case,

⁹¹ Iowa Code § 812.9(1).

⁹² Iowa Code § 812.9(1).

⁹³ Iowa Code § 812.9(2).

⁹⁴ Iowa Code § 812.9(2).

⁹⁵ Iowa Code § 812.9(3).

⁹⁶ Iowa Code § 812.9(4).

⁹⁷ Iowa Code § 901.5 (unnumbered paragraph 1).

⁹⁸ State v. August, 589 N.W. 2d 740, 744 (quoting State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979) and State v. Cupples, 260 Iowa 1192, 1197, 152 N.W.2d 277, 280 (1967)).

⁹⁹ Iowa Code §§ 901.3, 901.5, and 907.5. (Additional sentencing factors which may also be considered by the court include family characteristics, circumstances of the offense, time already served in confinement, the harm to the victim and the victim's family, and any mitigating circumstances related to the offense.)

¹⁰⁰ Iowa Code § 901.5.



especially misdemeanor cases. In most misdemeanor cases, a presentence investigation will not be available and the court will have to rely on statements from the prosecutor and the defense to make a determination as to the sentence.¹⁰¹

Court Discretion. The court has the discretion to decide the following sentences in cases that do not involve a mandatory prison or jail term:

- Prison for an indeterminate term for felonies and aggravated misdemeanors.¹⁰²
- Deferral of judgment or sentence, or suspension of sentence and placement on probation. Probation may include placement at a community-based correctional facility.¹⁰³
- Reconsideration of sentence to prison or jail followed by placement on probation.¹⁰⁴
- Determining whether a sentence is to run concurrently or consecutively with other sentences.¹⁰⁵
- Determining whether "mitigating circumstances" exist to reduce a sentence under Code section 124.406, 124.413, or 902.7.¹⁰⁶
- Determinate jail sentence for all misdemeanors except an aggravated misdemeanor term of confinement that is more than one year.¹⁰⁷

Generally, the court has the discretion to issue a specific fine within a range of monetary amounts provided for in statute.¹⁰⁸ However, in all misdemeanor cases and class "D" and "C" felonies, a minimum fine must be part of the sentence.¹⁰⁹ The court may in its discretion order the defendant to perform community service work in lieu of a fine in the event a person is unable to pay such a fine if it appears that community service work would be adequate to deter the person and discourage others from similar criminal activity.¹¹⁰

B. Sentencing System.

Mandatory Sentences. In recent years, many mandatory penalties of either a fine or imprisonment, or both, have been enacted and unique penalties have been established for a number of crimes. Examples of crimes which carry mandatory penalties include class "A" felonies, operating while under the influence, and domestic abuse assault.¹¹¹ In addition, a person convicted of a forcible felony listed in Code section 702.11 must be sentenced to a term of confinement without the possibility of receiving probation.¹¹²

¹⁰¹ Iowa Code § 901.2.

¹⁰² Iowa Code § 901.5(1). See also Iowa Code § 902.3 and Iowa Code ch. 907.

¹⁰³ Iowa Code §§ 901.5(3), (5), and 907.3. See generally, Iowa Code ch. 907.

¹⁰⁴ Iowa Code §§ 902.4 (felonies) and 903.2 (misdemeanors).

¹⁰⁵ Iowa Code § 901.8.

¹⁰⁶ Iowa Code § 901.10.

¹⁰⁷ Iowa Code § 903.1(2).

¹⁰⁸ Iowa Code § 901.5(4). See Iowa Code § 902.9 (felonies) and § 903.1 (misdemeanors) for fine amount ranges.

¹⁰⁹ The minimum fines for the following offenses are as follows: for a simple misdemeanor, \$65; for a serious misdemeanor, \$315; for an aggravated misdemeanor, \$625; for a class "D" felony, \$750; and for a class "C" felony, \$1,000. See Iowa Code §§ 902.9 and 903.1.

¹¹⁰ Iowa Code Supplement § 909.3A and Iowa Code § 909.7.

¹¹¹ Iowa Code §§ 902.1 (class "A" felonies) and 708.2A (domestic abuse assault), and Iowa Code Supplement § 321J.2(2)(c) (operating while under the influence).

¹¹² Iowa Code § 907.3.



Criminal Law Overview

Penalty Enhancements. Penalty enhancements have been added for several crimes, which has the effect of increasing the penalty applicable to an underlying offense if certain factors are present. Examples of crimes which carry penalty enhancements include distribution or possession of controlled substances on or near certain properties, criminal mischief in violation of individual rights, possession of weapons in or on weapons free zones, and sexually predatory offenses.¹¹³

Limitations on Parole. The General Assembly has also placed limitations on parole eligibility which has a similar effect on the length of a sentence as a mandatory sentence. The following criminal offenses have limitations placed on a person's ability to be paroled:

- Any forcible felony involving the use of a dangerous weapon.
- A habitual offender.
- First offense of conspiracy to manufacture or possess with the intent to deliver methamphetamine or amphetamines to a minor.
- Prior forcible felon serving a sentence for a felony other than a forcible felony.
- Any felony limiting the maximum accumulation of earned time to approximately 15 percent of the total sentence or otherwise referred to as 70 percent sentences.¹¹⁴

The Iowa Supreme Court has ruled that offenses which require service of 70 percent of the sentence do not constitute cruel and unusual punishment under the Iowa Constitution.¹¹⁵

Ten-year or Lifetime Parole — Special Sentence. A person convicted of a class "C" felony or greater offense that is sexually violent in nature is subject to serving a special sentence requiring lifetime parole upon completion of the sentence imposed for the underlying criminal offense.¹¹⁶ A person convicted of a class "D" felony or a misdemeanor offense that is sexually abusive in nature is subject to serving a special sentence that requires a 10-year term of parole upon completion of the sentence imposed for the underlying criminal offense.¹¹⁷ A person begins a special sentence on parole status after completion of the sentence for their underlying criminal offense.¹¹⁸ A person's release may be revoked just like any other person on parole except the first revocation of release cannot be for a period greater than two years, and any second or subsequent revocation cannot be for a period greater than five years.¹¹⁹ A person may be discharged from the special sentence by the Board of Parole prior to the expiration of such a sentence.¹²⁰

¹¹³ Iowa Code § 124.401A (distribution or possession of controlled substances on or near certain properties), § 716.6A (criminal mischief in violation of individual rights), and § 724.4A (possession of weapons); Iowa Code ch. 901A (sexually predatory offenses).

¹¹⁴ Iowa Code § 902.7 (forcible felony involving the use of a dangerous weapon), § 902.8 (habitual offender), § 902.8A (manufacture or intent to deliver methamphetamine or amphetamine to a minor), § 902.11 (forcible felon serving a felony sentence that is not a forcible felony), and § 902.12 (70 percent sentences).

¹¹⁵ State v. Lara, 580 N.W.2d 783, 785-6 (Iowa 1998).

¹¹⁶ Iowa Code § 903B.1. For felony lifetime parole offenses, see Iowa Code ch. 709 (sexual abuse) and Iowa Code §§ 726.2 (incest) and 728.12 (sexual exploitation of a minor).

¹¹⁷ Iowa Code § 903B.2. For class "D" felony and misdemeanor offenses requiring a 10-year parole term, see Iowa Code ch. 709 (sexual abuse) and Iowa Code §§ 726.2 (incest) and 728.12 (sexual exploitation of a minor).

¹¹⁸ Iowa Code §§ 903B.1 and 903B.2.

¹¹⁹ Iowa Code §§ 903B.1 and 903B.2.

¹²⁰ Iowa Code § 906.15.



C. Probation.

Probation is a procedure under which a criminal defendant, against whom a judgment of conviction has been or may be entered, is released subject to supervision by a judicial district department of correctional services.¹²¹ In the case of deferrals of judgment, a judgment is not entered and a sentence is not actually imposed before the person is placed on probation and a conviction is not made part of the defendant's record if the defendant successfully completes probation.¹²² However, the arrest data remains part of a person's criminal history data, despite successful completion of a deferred judgment, and may be disseminated as provided in Code section 692.2, subsection 1, paragraph "b," subparagraph (4). A person receiving a deferred judgment is assessed a civil penalty of an amount not less than the amount of any criminal fine authorized by law for the offense.¹²³ If a defendant receives a deferred sentence, judgment is entered and the conviction is made part of the defendant's record but the sentence is not actually imposed.¹²⁴ In the case of a suspended sentence, the conviction is made part of the defendant's record, and the sentence is imposed but service of the term of the sentence is suspended over the period of probation.¹²⁵ Decisions relating to the conditions under which a person is released on probation, the length of probation, and the time of discharge from supervision are made by the court.¹²⁶ The court has discretion in felony cases that do not require a mandatory prison sentence to sentence a defendant to a minimum of two years' and a maximum of five years' probation.¹²⁷ In misdemeanor cases the minimum probationary period is one year and the maximum period is two years.¹²⁸ Normally, the sentencing court maintains jurisdiction over a defendant's probation and will conduct any revocation or modification hearings regarding probation.¹²⁹

D. Reconsideration of a Sentence.

A person convicted of a felony who has been sentenced to a term of confinement may have the sentence reconsidered within one year from the date the person begins to serve the sentence upon a motion by the court or the Director of the Department of Corrections.¹³⁰ A person convicted of a misdemeanor and sentenced to a term of confinement may have the sentence reconsidered within 30 days from the date the sentence begins.¹³¹ If the court reconsiders a person's sentence, the court may order the person to serve any sentence permitted by law, including probation.¹³² However, the court may not reconsider a person's sentence if the person was convicted of a class "A" felony, or any sentence for a crime that carries a mandatory term of confinement.¹³³

¹²¹ Iowa Code § 907.1.

¹²² Iowa Code § 907.3(1).

¹²³ Iowa Code § 907.14(1).

¹²⁴ Iowa Code § 907.3(2).

¹²⁵ Iowa Code § 907.3(3).

¹²⁶ Iowa Code §§ 907.6, 907.7, and 907.9(1).

¹²⁷ Iowa Code § 907.7.

¹²⁸ Iowa Code § 907.7.

¹²⁹ Iowa Code § 907.8.

¹³⁰ Iowa Code § 902.4.

¹³¹ Iowa Code § 903.2.

¹³² Iowa Code §§ 901.5, 902.4, and 903.2.

¹³³ Iowa Code § 902.4.



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E. Parole and Work Release.

Parole. Parole is the release of an inmate from a term of confinement before the expiration of the inmate's sentence, subject to the supervision by a judicial district department of correctional services.¹³⁴ Unlike probation, however, the person is still considered to be serving the sentence while the person is released, meaning that the term of the sentence will continue to run and may even expire during the course of the release.¹³⁵

Work Release. Work release is the temporary release of an inmate for employment purposes.¹³⁶ An inmate may be released entirely from a correctional institution for work purposes or may leave actual confinement each day for work purposes.¹³⁷ Work release may also include an out-of-state work or treatment placement or release for purposes of seeking employment, attendance at an educational institution, or family visitation.¹³⁸ An inmate may even be placed on work release status in the inmate's own home, for child care and housekeeping or other appropriate purposes, although the inmate is to return to the institution or local supervised housing facilities once the work release hours have concluded.¹³⁹ An inmate may not be placed on work release for longer than six months in any 12-month period without special approval.¹⁴⁰

F. Furlough, Reprieve, Pardon, and Commutation.

Furlough. Furlough is the temporary release of an inmate due to serious family illness, family death, or for job search, training, or rehabilitation-related purposes.¹⁴¹ A furlough program may be established by the Director of the Department of Corrections with the approval of the Board of Corrections and may not exceed 14 days in length.¹⁴²

Reprieve, Pardon, and Commutation. A reprieve is a temporary stay from the carrying out of a sentence.¹⁴³ A pardon is the permanent cancellation of a sentence and a commutation is the reduction of a sentence.¹⁴⁴ The power to grant a reprieve, pardon, or commutation of sentence rests with the Governor.¹⁴⁵ A person who has been convicted of a class "A" felony may request the Governor to commute the person's sentence no more frequently than every 10 years.¹⁴⁶ All other persons who have been convicted of a crime may apply to the Governor for a reprieve, pardon, or commutation at any time.¹⁴⁷ Upon application by a person for a reprieve, pardon, or commutation, the Board of Parole is

¹³⁴ Iowa Code § 906.1.

¹³⁵ Iowa Code § 906.16.

¹³⁶ Iowa Code § 906.1.

¹³⁷ See generally, Iowa Code §§ 904.901 and 904.910.

¹³⁸ Iowa Code § 904.901.

¹³⁹ Iowa Code § 904.901.

¹⁴⁰ Iowa Code § 904.910(4).

¹⁴¹ Iowa Code § 904.108(2).

¹⁴² Iowa Code § 904.108(2).

¹⁴³ Black's Law Dictionary, p. 1302 (6th ed. 1990).

¹⁴⁴ Black's Law Dictionary, p. 1113 (6th ed. 1990) (pardon) and Black's Law Dictionary, p. 280 (6th ed. 1990) (commutation).

¹⁴⁵ Iowa Const. Art. IV, § 16; Iowa Code § 914.1.

¹⁴⁶ Iowa Code § 902.2.

¹⁴⁷ Iowa Code § 914.2.



required to first review the application and subsequently to make recommendations to the Governor.¹⁴⁸

G. Earned Time.

Overview. During the 2000 Legislative Session, the General Assembly statutorily modified the term "good conduct time" to "earned time," and made some changes in the manner earned time is accumulated.¹⁴⁹ Once a person has been sentenced to a term of incarceration, one of the factors that may affect how long the person remains incarcerated is "earned time."¹⁵⁰ Earned time is one of the tools used by the Department of Corrections to provide inmates of correctional institutions with an incentive to comply with the rules and regulations established for those facilities. For the purpose of calculating earned time, sentences are classified as either category "A" or "B" sentences.¹⁵¹

Category "A." An inmate who has been sentenced to a category "A" sentence is eligible for a reduction in sentence of one and two-tenths days for each day of good conduct while committed to one of the Department of Corrections institutions.¹⁵² To accumulate "earned time," an inmate must exhibit good conduct and satisfactorily participate in an employment, treatment, or educational program.¹⁵³ If the inmate is a class "A" felon, the earned time accumulated will not actually reduce the person's life sentence, but will be credited against the person's sentence if the sentence is ever commuted to a term of years.¹⁵⁴

Category "B." A category "B" sentence is commonly referred to as a 70 percent sentence. If an inmate is sentenced for a felony listed in Code section 902.12, the inmate's sentence is a category "B" sentence and the rules for accumulation of credit for earned time are different than for category "A" sentences.¹⁵⁵ Inmates with category "B" sentences are only eligible for a maximum accumulation of good time of fifteen eighty-fifths of a day for each day of good conduct.¹⁵⁶ For example, an inmate sentenced for robbery in the first degree, a 25-year sentence, will serve 20.59 years in prison, if the person is not paroled prior to the expiration of the sentence.¹⁵⁷ A person sentenced to a category "B" sentence is eligible for parole after serving 70 percent of the maximum term of the sentence.¹⁵⁸ Thus, a person serving a 25-year sentence will be eligible for parole after serving 17.5 years in prison.¹⁵⁹

The following offenses listed in Code section 902.12 are considered category "B" sentences:

¹⁴⁸ Iowa Code § 914.3.

¹⁴⁹ 2000 Iowa Acts ch. 1173; see Iowa Code ch. 903A.

¹⁵⁰ Iowa Code § 903A.2.

¹⁵¹ Iowa Code § 903A.2(1).

¹⁵² Iowa Code § 903A.2(1)(a).

¹⁵³ Iowa Code § 903A.2(1)(a).

¹⁵⁴ Iowa Code § 903A.2(5).

¹⁵⁵ Iowa Code § 903A.2(1)(b).

¹⁵⁶ Iowa Code § 903A.2(1)(b).

¹⁵⁷ Fifteen eighty-fifths multiplied by 25 years equals 4.41 years of potential earned time credits. Twenty-five years minus 4.41 years equals 20.59 years of total confinement.

¹⁵⁸ Iowa Code § 902.12.

¹⁵⁹ Twenty-five years multiplied by 70 percent equals 17.5 years.



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- Murder in the second degree.
- Attempted murder.
- Sexual abuse in the second degree.
- Kidnapping in the second degree.
- Robbery in the first and second degrees.
- Homicide by vehicle, where the defendant was found to be intoxicated or driving recklessly or eluding police and was also convicted of leaving the scene of the accident.

Computation. An inmate begins to accrue earned time at the commencement of the inmate's sentence at a correctional institution.¹⁶⁰ An inmate's sentence is also credited for any time spent incarcerated on the days prior to being sent to the institution.¹⁶¹ However, an inmate will not actually receive the benefit of the reduction unless the inmate has successfully served the inmate's full term, less time earned and not forfeited.¹⁶² Any or all of the reduction of an inmate's sentence which is due to the accrual of earned time credits may be forfeited at any time during the inmate's sentence for a violation of an institutional rule or other disciplinary action.¹⁶³

VI. Department of Corrections.

If a person is sentenced to prison, under Iowa law the person is deemed committed to the custody of the Director of the Department of Corrections.¹⁶⁴ A person remains in prison under the authority of the Department of Corrections until the person serves out the full term of the sentence, or until released by order of the Board of Parole, or upon a judge's order reconsidering the sentence.¹⁶⁵ The director shall develop guidelines and procedures which determine the amount of earned time earned or forfeited by inmates.¹⁶⁶

VII. Judicial District Departments of Correctional Services.

Upon a conviction, a judge may assign a person to a judicial district department of correctional services.¹⁶⁷ A judicial district department of correctional services provides community-based correctional programs for persons who have been placed on probation or parole.¹⁶⁸ A person placed on probation or parole may be subject to different levels of criminal sanctions.¹⁶⁹ For example, a person may be residing at a community correctional

¹⁶⁰ Iowa Code § 903A.5.

¹⁶¹ Iowa Code § 903A.5.

¹⁶² Iowa Code § 903A.5.

¹⁶³ Iowa Code § 903A.3.

¹⁶⁴ Iowa Code §§ 901.7, 902.6, and 904.102.

¹⁶⁵ Iowa Code § 902.6.

¹⁶⁶ Iowa Code § 903A.4.

¹⁶⁷ Iowa Code § 901.5(5).

¹⁶⁸ Iowa Code §§ 905.2, 906.1 and Iowa Code § 907.1(4).

¹⁶⁹ Iowa Code § 901B.1.



center and receiving treatment or may be residing at the person's own residence and be required to be employed.¹⁷⁰

VIII. Board of Parole.

The authority for granting of parole or work release is vested in the Iowa Board of Parole.¹⁷¹ Persons who are sentenced to prison, with the exception of class "A" felons whose sentences have not been commuted, may become eligible for parole or work release prior to the expiration of their sentences.¹⁷² Dispositions involving violations of conditions of parole or work release are also determined by the Board of Parole.¹⁷³ The statutory standards for release on parole and work release include such standards as the best interest of society and of the offender, and a reasonable probability of whether the person can be released without detriment to the community or to the person.¹⁷⁴ The board has further defined these standards through administrative rules.¹⁷⁵ To assist in its decision-making task, the board uses various tools, including live testimony and documentary evidence, the individual's criminal history, and a risk assessment model.¹⁷⁶ Under the risk assessment model, each criminal offense is coded by type, reflecting whether the crime involved violence, escape, property damage, or other elements.¹⁷⁷ Offenses are also coded by felony or misdemeanor classification, and numerical values are assigned to each offense class and justice system violation.¹⁷⁸ The model produces risk factor scores for the individual that reflect not only the offense under consideration but also the person's criminal history.¹⁷⁹

IX. DNA Profiling.

Beginning on June 14, 2005, a person who receives a deferred judgment for a felony or against whom a judgment or conviction for a felony has been entered is required to submit a DNA sample for DNA profiling.¹⁸⁰ Any person determined to be a sexually violent predator pursuant to Code chapter 229A, any person required to register as a sex offender, or any person found not guilty by reason of insanity for an offense that requires DNA profiling is also required to submit a DNA sample for DNA profiling.¹⁸¹ Any juvenile

¹⁷⁰ See Iowa Code § 901B.1 for other possible intermediate criminal sanctions levels.

¹⁷¹ Iowa Code § 904A.4(1).

¹⁷² Iowa Code § 906.4.

¹⁷³ Iowa Code §§ 906.3 and 906.16(2), (3).

¹⁷⁴ Iowa Code § 906.4.

¹⁷⁵ Iowa Admin. Code 205-8.10(1). See also Board of Parole Minutes from October 1993, which discuss the risk assessment model currently used by the Board of Parole. The standards include previous criminal record; nature and circumstances of the offense; recidivism record; convictions on behavior indicating a propensity for violence; participation in institutional programs, including academic and vocational training; psychiatric and psychological evaluations; length of time served; evidence of serious or habitual institutional misconduct; success or failure of probation; prior parole or work release; prior refusal to accept parole or work release; history of drug or alcohol use; parole plan formulated by the inmate; general attitude and behavior while incarcerated; and assessment.

¹⁷⁶ Iowa Code § 904A.4.

¹⁷⁷ Iowa Admin. Code 205-8.10(1) and the Board of Parole's Minutes dated October 1993 discussing the risk assessment model currently in use.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Iowa Code Supplement § 81.2(1).

¹⁸¹ Iowa Code Supplement § 81.2(2), (3), and (6). See 2007 Iowa Acts, ch. 38 (S.F. 204), § 4.



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adjudicated delinquent of an offense that requires DNA profiling is also subject to the requirements of submitting a DNA sample for DNA profiling.¹⁸²

A person convicted, adjudicated a delinquent, civilly committed as a sexually violent predator, or found not guilty by reason of insanity, prior to June 14, 2005, who would otherwise be required to submit a DNA sample under the provisions of Code chapter 81, and who is under the custody, control, or jurisdiction of a supervising agency, must submit a DNA sample for DNA profiling prior to being released by the supervising agency.¹⁸³

X. Civil Commitment of Sexually Violent Predators.

Procedure. In the landmark case *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that permitted the civil commitment of certain sexually violent criminal offenders after the offender's criminal sentence had been completed.¹⁸⁴ A sexually violent predator is defined as a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes it likely that the person will engage in future sexually predatory acts.¹⁸⁵ A sexually violent offense is defined in Code section 229A.2(10). If it is determined an individual confined in prison or any other state institution may meet the definition of a sexually violent predator, the state agency with jurisdiction over the individual must notify the Attorney General of the individual's anticipated discharge from confinement.¹⁸⁶ The Attorney General or, in some instances, the prosecuting attorney from the county in which the sexually violent offense took place may file a petition with the district court alleging the individual is a sexually violent predator and request the person be committed by means of a civil commitment proceeding to the care of the Department of Human Services.¹⁸⁷

Civil Commitment. If a court or a jury determines beyond a reasonable doubt that an individual meets the definition of a sexually violent predator, the individual is committed to the care, custody, and control of the Department of Human Services until such time the person is safe to be placed in a transitional release program or discharged.¹⁸⁸ For more information on the form of civil commitment, see the Legislative Guide entitled "Legislative Guide to Civil Commitment of Sexually Violent Predators."

XI. Sex Offender Registry.

A. Registration.

A person who has been convicted of certain sexually related criminal offenses is required to register as a sexual offender with the sheriff of the county of the person's residence.¹⁸⁹ A person must register within five days of a conviction for which the person is

¹⁸² Iowa Code Supplement § 81.2(4).

¹⁸³ 2005 Iowa Acts ch. 158, § 18.

¹⁸⁴ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

¹⁸⁵ Iowa Code Supplement § 229A.2(11).

¹⁸⁶ Iowa Code § 229A.3(1).

¹⁸⁷ Iowa Code § 229A.4(1), (2).

¹⁸⁸ Iowa Code § 229A.7(5).

¹⁸⁹ Iowa Code §§ 692A.1, 692A.2(1), and 692A.3(1).



not placed in confinement, or within five days of being released from custody.¹⁹⁰ A person who is required to register must also reregister within five days of changing residence or within five days of changing the person's name.¹⁹¹ A person must also notify the sheriff of the county of residence if the person moves out of state and register in that new state if that state requires sex offenders to register.¹⁹² If the person is attending or working at an institution of higher education, the person must also notify the county sheriff where the institution is located.¹⁹³ Any person required to register as a sex offender may have their profile posted on the web page of the Department of Public Safety.¹⁹⁴ When a person required to register moves into a school district or within a school district, the county sheriff of the county of the person's new residence shall provide relevant Sex Offender Registry information to the administrative office of the school district in which the person required to register resides, and shall also provide relevant information to any private school near the person's new residence.¹⁹⁵

B. Length of Registration.

Ten-Year Registration. A person required to register as a sex offender is required to register for a period of 10 years.¹⁹⁶ If a person is placed on probation, parole, or work release and that status is subsequently revoked, the 10-year registration period begins anew upon release from custody.¹⁹⁷ If a person is incarcerated for another offense while on the Sex Offender Registry, the 10-year registry period is tolled while the person is incarcerated.¹⁹⁸

Misdemeanor Special Sentence. A person who is serving a misdemeanor special sentence is required to register for a period equal to the term of the special sentence.¹⁹⁹

Felony Special Sentence Registration. A person required to register as a sex offender who is serving a special sentence is required to register as a sex offender for a period equal to the length of the special sentence.²⁰⁰

Lifetime Registration. If a person commits an aggravated offense or commits a second or subsequent offense that requires registration, the person is required to register as a sex offender for the rest of the person's life.²⁰¹

¹⁹⁰ Iowa Code § 692A.3(1).

¹⁹¹ Iowa Code § 692A.3(2).

¹⁹² Iowa Code § 692A.3(4).

¹⁹³ Iowa Code § 692A.3A.

¹⁹⁴ Iowa Code § 692A.13.

¹⁹⁵ Iowa Code § 692A.13(3).

¹⁹⁶ The 10-year period commences from the date the person is placed on probation, the date of release from parole or work release, the date of release of a juvenile from foster care or residential treatment, or the date of any other release from custody. See Iowa Code § 692A.2(1).

¹⁹⁷ Iowa Code § 692A.2(3).

¹⁹⁸ Iowa Code § 692A.2(3).

¹⁹⁹ Iowa Code § 692A.2(2). For a list of misdemeanor special offenses requiring a 10-year parole term, see Iowa Code § 903B.2.

²⁰⁰ Iowa Code § 692A.2(2). For a list of felony special offenses requiring lifetime parole and thus lifetime registration unless otherwise discharged, see Iowa Code § 903B.1.

²⁰¹ Iowa Code § 692A.2(5). For a list of specific aggravated criminal offenses, see Iowa Code § 692A.1(1).



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C. Penalties.

A person who knowingly fails to comply with any registration requirements commits an aggravated misdemeanor for a first offense and a class "D" felony for any second or subsequent offense.²⁰² If a person fails to register in the county where the person attends an institution of higher education, the person commits a serious misdemeanor for a first offense, and a class "D" felony for a second or subsequent offense.²⁰³ A person who knowingly fails to comply with any registration requirements and subsequently commits a sexually related criminal offense commits a class "C" felony.²⁰⁴ The Iowa Supreme Court has concluded that registering for the Sex Offender Registry does not violate the Ex Post Facto Clause of the federal and state constitutions.²⁰⁵

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²⁰² Iowa Code § 692A.7(1).

²⁰³ Iowa Code § 692A.3A.

²⁰⁴ Iowa Code § 692A.7(1).

²⁰⁵ State v. Pickens, 558 N.W. 2d 396, 400 (Iowa 1997).

APPENDIX

Iowa's Sentencing System — Offenses With Sentencing Enhancements

This Appendix, in chart format, compares each criminal offense that contains a sentence enhancement with a typical sentence within the applicable offense classification. The criminal offenses are listed in the first column on the left and the sentence enhancements are listed on the top row of the chart. If a box within the chart contains a "black square," the corresponding sentence enhancement applies to the criminal offense listed in the first column. The last column on the right contains the prison term range in years if all of the sentencing enhancements that are applicable were applied to the criminal sentence. For example, if a prison term range is 20.59 to 25 years, a person would serve 20.59 years in prison if all the "earned time" credits were earned and 25 years in prison if no "earned time" credits were earned. However, a person may serve less than 20.59 years in prison if the person serving the particular criminal offense is parole-eligible.

If an offense is classified as a forcible felony, a person must be sentenced to a term of confinement in prison without any possibility of receiving probation. Finally, many "Sentencing Enhancements" and "Minimum Prison Terms" at the top of the chart have been abbreviated, "By Schl" means distribution of a controlled substance near a school, "Presence of Minor" means manufacturing of methamphetamine in the presence of minors, "2nd Offense 3x Max" means a second or subsequent conviction for a controlled substance offense can be up to 3 times the maximum term of confinement, "5 Yr" means a person who distributes a controlled substance to a person who is under 18 years of age receives a minimum term of confinement of 5 years, "10 Yr" means a person who distributes a controlled substance to a person who is under 18 years of age near a school or park receives a minimum term of confinement of 10 years, "1/3 Max" means certain violators of section 124.401 (controlled substances) must serve 1/3 the maximum sentence prescribed by law, "Fel Dom Abuse" means felony domestic abuse, and "Hab Off" means habitual offender.

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Iowa's Sentencing System -- Offenses With Sentencing Enhancements

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Offense Category		Def/ Susp	Special Sanctions and Notes	Forcible Felony 702.11 907.3	Max Prison Term in Yrs	Sentencing Enhancements:						Minimum Prison Terms - Limitation on Parole:							Parole Eligible	Prison Term Ranges w/Earned Time in Yrs
	Enact Yr.					Poss. Firearm 2x Max 124.401(1)(e)	Poss. Off. Weapon 3x Max 124.401(1)(f)	By Schl 124.401A 124.401B	Presence of Minor 5 Yrs 124.401C	2nd Offense 3x Max 124.411	Special Sentence 903B	5 yr 124.406 or 902.7 (waivable)	10 yr 124.401D or 902.8A (waivable)	1/3 Max 124.413 (waivable)	Fel Dom Abuse 1 Yr 708.2A(4)	Hab Off 3 Yr 902.8	Prior Forcible 1/2 Max 902.11	70 Percent Sentence 902.12		
Class A Felony:																				
Typical				■	Life															Life
Meth-2nd/124.401D	1999				Life															Life
Sexual Abuse/Lascivious Acts 709.3/709.4/709.8	2005		Upon second conviction for either offense		Life															Life
Sex Predator/901A.2(4)	1996		2nd Sexual Predatory Offense under 901A.2(3)		Life															Life
Sex Predator/901A.2(5)	1996		2nd Sex Abuse Offense under 709.3(2)		Life															Life
Sex Predator/901A.2(5A)	2002		If committed under Chapter 229A and subsequent convictions for a sexually violent or sexually predatory offenses		Life															
Meth-1st/124.401D	1999	■			99			5 yrs.					■				■		■	42.4 to 104
Class B Felony:																				
Typical					25												■		■	11.4 to 25
Drug /124.401 (1)(a)	1999-meth and amphet	not if meth- amphe 2nd offense			50	■	■	5 yrs.	■	■				■			■		■	22.8 to 1,080
Drug /124.401(1)(b)	1999-meth and amphet	not if meth- amphe 2nd offense			25	■	■	5 yrs.	■	■				■			■		■	11.4 to 630
Drug Del Minors/124.406	Prior to 1990	■			25					■		■	■				■		■	11.4 to 75
Murder-2nd/707.3	1996			■	50							■						■	■	35 to 50
Veh. Homicide/707.6A(1) when Leaving Scene/ 321.261(3)	1998				25													■	■	17.5 to 25
Att. Murder/707.11	1996			■	25							■						■	■	17.5 to 25
Terrorism/708A.1A	2002			■	50							■							■	22.8 to 50
Sex Abuse-2nd/709.3	1996/2005		Lifetime parole	■	25						■	■						■	■	17.5 to life
Kidnapping-2nd/710.3	1996			■	25							■						■	■	17.5 to 25
Robberv-1st/711.2	1996			■	25							■						■	■	17.5 to 25

■=column is applicable

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Offense Category		Def/ Susp	Special Sanctions and Notes	Forcible Felony 702.11 907.3	Max Prison Term in Yrs	Sentencing Enhancements:					Special Sentence 903B	Minimum Prison Terms - Limitation on Parole:							Parole Eligible	Prison Term Ranges w/Earned Time in Yrs
						Poss. Firearm 2x Max 124.401(1)(e)	Poss. Off. Weapon 3x Max 124.401(1)(f)	By Schl 124.401A 124.401B	Presence of Minor 5 Yrs 124.401C	2nd Offense 3x Max 124.411		5 yr 124.406 or 902.7 (waivable)	10 yr 124.401D or 902.8A (waivable)	1/3 Max 124.413 (waivable)	Fel Dom Abuse 1 Yr 708.2A(4)	Hab Off 3 Yr 902.8	Prior Forcible 1/2 Max 902.11	70 Percent Sentence 902.12		
	Enact Yr.																			
Arson-1st/712.2	Prior to 1990			■	25							■					■		■	11.4 to 25
Burglary-1st/713.3	Prior to 1990			■	25							■					■		■	11.4 to 25
Child Endang./726.6A	1994			■	50							■					■		■	22.8 to 50
Sex Predator/901A.2(3)	1996		Add. 2 yrs rel. superv.		50															42.5 to 50
Class C Felony:																				
Typical		■			10												■		■	4.6 to 10
Drug/124.401(1)(c)	Prior to 1990	■			10	■	■	5 yrs.	■	■				■			■		■	4.6 to 360
Drug Del Minors/124.406	Prior to 1990	■			10					■							■		■	4.6 to 30
Veh. Homicide/707.6A(2) when Leaving Scene/ 321.261(3)	1998	■			10												■		■	7 to 10
Asslt - Part. Fel./708.3	Prior to 1990			■	10							■					■		■	4.6 to 10
Willful Injury/708.4(1)	Prior to 1990			■	10							■					■		■	4.6 to 10
Intimidation/708.6	Prior to 1990			■	10							■					■		■	4.6 to 10
Sex Abuse-3rd/709.4	Prior to 1990/2005		Lifetime parole	■	10 to life - parole						■	■					■		■	4.6 to life - parole
Detention in a Brothel/709.7	2005		Lifetime parole		10 to life - parole						■						■		■	4.6 to life - parole
Lasc Acts/709.8	2005	■	Lifetime parole		10 to life - parole						■						■		■	4.6 to life - parole
Assault w/Intent to Commit Sex Abuse/709.11	2005		Lifetime parole	■	10 to life - parole						■	■					■		■	4.6 to life - parole
Kidnapping-3rd/710.4	Prior to 1990/2005			■	10							■					■		■	4.6 to 10
Robbery-2nd/711.3	1996			■	10							■					■	■	■	7 to 10
Child Endang./726.6A	1994			■	10							■					■		■	4.6 to 10
Sexual Exploitation/728.12	2005		Lifetime parole		10 to life - parole						■						■		■	4.6 to life - parole
Sex Predator/901A.2(3)	1996		Add. 2 yrs rel. superv.		25															21.25 to 25
Habitual Offender/902.8	Prior to 1990				15											■	■		■	6.8 to 15
Class D Felony:																				
Typical		■			5												■		■	2.3 to 5
Optional Determinate Term (limited to certain offenses and offenders)/902.3A	2001		Judge must cite mitigating factors; add. 2 yrs rel. superv.		1 to 4.99														after half of max term	0.46 to 4.99
Drug/124.401(1)(d)	Prior to 1990	■			5	■	■	5 yrs.	■	■				■			■		■	2.3 to 270
Drug Poss-3rd/124.401(5)	1998	■	Probation, drug testing		5			100 hrs. comm. service		■							■		■	2.3 to 15
OWI-3rd/321J.2; OWI Boating-3rd/462A.14	OWI-Prior to 1990; OWI Boating 2000		\$1,000 civil penalty if BAC is refused (462A.14)		5														■	2.3 to 5

■=column is applicable

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						Poss. Firearm 2x Max 124.401(1)(e)	Poss. Off. Weapon 3x Max 124.401(1)(f)	By Schl 124.401A 124.401B	Presence of Minor 5 Yrs 124.401C	2nd Offense 3x Max 124.411		5 yr 124.406 or 902.7 (waivable)	10 yr 124.401D or 902.8A (waivable)	1/3 Max 124.413 (waivable)	Fel Dom Abuse 1 Yr 708.2A(4)	Hab Off 3 Yr 902.8	Prior Forcible 1/2 Max 902.11	70 Percent Sentence 902.12			
	Enact Yr.																				
Serious Injury OWI/ 707.6A(4)	1997				5																2.3 to 5
Domestic Abuse/708.2A(4)	1997			■	5							■			■			■		■	2.3 to 5
Asslt - Part. Fel./708.3	Prior to 1990			■	5							■						■		■	2.3 to 5
Admin. Harmful Sub/708.5	Prior to 1990			■	5							■						■		■	2.3 to 5
Intimidation/708.6	Prior to 1990			■	5							■						■		■	2.3 to 5
			Add. 2 yrs rel. superv. if sent to prison. 10 yr. parole																		
Lasc Acts w/Child/709.8	2000/2005	■			5 to 15							■						■		■	2.3 to 15
Assault w/Intent to Commit Sex Abuse/709.11	2005		10 yr. parole	■	5 to 15							■	■					■		■	2.3 to 15
Sexual Exploit by Counselor/709.15(4)(a)	2005		10 yr. parole		5 to 15							■						■		■	2.3 to 15
Sexual Exploit by School Employee/709.15(5)(a)	2005				5 to 15							■						■		■	2.3 to 15
Abuse of corpse/709.18	2005		10 yr. parole		5 to 15							■						■		■	2.3 to 15
Animal Torture-2nd/ 717B.3A	2000	■	Psych. eval. and treat.		5													■		■	2.3 to 5
Sex Predator/901A.2(3)	1996		Add. 2 yrs rel. superv.		25																21.25 to 25
Habitual Offender/902.8	Prior to 1990				15												■	■		■	6.8 to 15
Aggravated Misdemeanor:																					
Typical		■			2														■		0.9 to 2
Drug/124.401(1)(d)	Prior to 1990	■			2	■	■		■	■				■					■		0.9 to 126
Drug Poss-2nd, Drug Poss Mari.-3rd/124.401(5)	Drug Poss- 2nd-1998; Poss. Mari. Prior to 1990	■	Probation, drug testing		2			100 hrs. comm. service		■									■		0.9 to 6
OWI-2nd/321J.2; OWI Boating-2nd/462A.14	2000		\$1,000 civil penalty if BAC is refused (462A.14B)		2														■		0.9 to 2
Domestic Abuse/708.2A	1991				2														■		0.9 to 2
Assault w/Intent to Commit Sex Abuse/709.11	2005		10 year parole		2 to 12							■							■		0.9 to 12
Indecent Contact w/Child/709.12	2005		10 year parole		2 to 12							■							■		0.9 to 12
Sexual Exploit by Counselor/709.15(4)(b)	2005		10 year parole		2 to 12							■							■		0.9 to 12
Sexual Exploit by School Employee/709.15(5)(b)	2005		10 year parole		2 to 12							■							■		0.9 to 12
Sexual Misconduct with Offenders/709.16(1,3)	2005		10 year parole		2 to 12							■							■		0.9 to 12
Sexual Misconduct with Juveniles/709.16(2)	2005		10 year parole		2 to 12							■							■		0.9 to 12
Animal Torture-1st/717B.3A	2000	■	Psych. eval. and tx; comm. work required		2														■		0.9 to 2

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						Poss. Firearm 2x Max 124.401(1)(e)	Poss. Off. Weapon 3x Max 124.401(1)(f)	By Schl 124.401A 124.401B	Presence of Minor 5 Yrs 124.401C	2nd Offense 3x Max 124.411		5 yr 124.406 or 902.7 (waivable)	10 yr 124.401 D or 902.8A (waivable)	1/3 Max 124.413 (waivable)	Fel Dom Abuse 1 Yr 708.2A(4)	Hab Off 3 Yr 902.8	Prior Forcible 1/2 Max 902.11	70 Percent Sentence 902.12		
	Enact Yr.																			
Sex Predator/901A.2(1)	1996		1 prior misd Sexual Predatory Offense/ add. 2 yrs. rel. superv.		4															3.4 to 4
Sex Predator/901A.2(2)	1996		2 prior misd Sexual Predatory Offense/ add. 2 yrs. rel. superv.		10															8.5 to 10 yrs.
Serious Misdemeanor: (May be sentenced to prison if consecutive sentences add up to more than one year)																				
Typical		■																		
Drug Poss-1st, Drug Poss Mari.-2nd/124.401(5)	Prior to 1990	■	Probation, drug testing					100 hrs. comm. service												
Drug Poss Mari.- 1st/124.401(5)	Prior to 1990	■	Probation, drug testing					100 hrs. comm. service												
OWI-1st/321J.2; OWI Boating-1st/462A.14	2000	■	Not deferred if 907.3(1) (g)(1) applies; \$500 civil penalty if BAC is refused (462A.14B)																	
Domestic Abuse/708.2A	1991																			
Indecent Exposure/709.9	2005		10 yr. parole								■								■	10 yrs.
Lasc Conduct/709.14	2005		10 yr. parole								■								■	10 yrs.
Sexual Exploit by Counselor/709.15(4)(c)	2005		10 yr. parole								■								■	10 yrs.
Invasion of Privacy/709.21	2005		10 yr. parole								■								■	10 yrs.
Sexual Predator/901A.2(1)	1996		Add. 2 yrs rel. superv.		2															1.7 to 2 yrs.
Sexual Predator/901A.2(2)	1996		Add. 2 yrs rel. superv.		10															8.5 to 10 yrs.
0714rr-1																				

■=column is applicable